



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

December 18, 2008

OVERNIGHT MAIL


Mr. Ben Hagood
Hagood & Kerr, PA
Attorneys & Counselors At Law
654 Coleman Blvd., Mt. Pleasant, SC 29464

**Re: Proposed Voluntary Cleanup Contract
City of Charleston Public Works Property
Charleston County**

Dear Mr. Hagood:

Enclosed is the proposed Non-Responsible Party Voluntary Cleanup Contract for Ashley II of Charleston (A-II) regarding the City of Charleston Public Works Property located at 1950 and 2150 Milford Street, Charleston, South Carolina. Should A-II agree to the terms therein, please ensure that the appropriate individual signs the contract and returns it to me at SCDHEC – BLWM, 2600 Bull Street, Columbia, SC 29201. Should you wish to further discuss the terms of the contract, please telephone me at (803) 896-4121.

Thank you for your patience and cooperation in this matter. The Department looks forward to working with A-II to address this Property under the South Carolina Voluntary Cleanup Program.

Yours truly,

Angela Gorman, Hydrogeologist
Brownfields/Voluntary Cleanup Program
Division of Site Assessment and Remediation
Bureau of Land and Waste Management

cc: Michael Costa, Magnolia Development (via electronic mail)
Scott Freeman, Magnolia Development (via electronic mail)
Christine Sanford-Coker, Director, EQC Region 7 (via electronic mail)
BLWM File # 50160

enclosure

**VOLUNTARY CLEANUP CONTRACT
08-5794-NRP**

**IN THE MATTER OF
CITY OF CHARLESTON PUBLIC WORKS PROPERTY, CHARLESTON COUNTY
and
ASHLEY II OF CHARLESTON, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Ashley II of Charleston, LLC, pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002 and Supp. 2007), as amended on June 11, 2008, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C §§ 9601, et seq., and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200 (2002), with respect to the Property located at 1950 and 2150 Milford Street, Charleston, South Carolina. The Property is identified by Tax Map Serial Numbers 466-00-00-017 and 466-00-00-017-046. A legal description of the Property is attached as Appendix A. The City of Charleston Public Works Property includes approximately 16.37 acres and is bounded to the east by Interstate 26 and otherwise generally surrounded by light industrial properties, some of which are currently vacant. In entering this Contract, the Department relies on the representations of the "Information and Certification" of March 18, 2008 by Ashley II of Charleston, LLC, which is incorporated into this Contract and attached as Appendix B and includes a tax map of the Property.

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them in CERCLA, including any amendments, or in the regulations promulgated thereunder.
 - A. "A-II" shall mean Ashley II of Charleston, LLC.
 - B. "A-II Beneficiaries" shall mean Ashley II of Charleston, LLC, its Non-Responsible Party lenders, parents, subsidiaries, members, managing

members, assigns and successors, including new purchasers, lessees, heirs, and beneficiaries but only to the extent that such parties have never been a Responsible Party at the Property.

- C. "Bona Fide Prospective Purchaser" shall have the same meaning as that in CERCLA, Section 101(40).
- D. "Contamination" means presence of a Pollutant or Contaminant; Petroleum or Petroleum Product; or Hazardous Substance.
- E. "Contract" shall mean this Voluntary Cleanup Contract.
- F. "Department" shall mean the South Carolina Department of Health and Environmental Control or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- G. "Existing Contamination" shall mean any contamination, including Pollutants or Contaminants, Petroleum or Petroleum Products, or Hazardous Substances, present or existing on or under the Site as of the execution date of this Contract.
- H. "Non-Responsible Party" (or "NRP") shall mean any party which is neither:
 - a. A responsible party at the time the voluntary cleanup contract is signed, including lenders, economic development agencies, fiduciaries, trustees, executors, administrators, custodians, subsequent holders of a security interest; nor
 - b. A parent, subsidiary of, or successor to a responsible party.
- I. "Oversight Costs" shall mean those costs, both direct and indirect, incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract and any future amendments thereto.
- J. "Property" shall mean the property as described in Appendix A and as further referenced in the Information and Certification attached as Appendix B, and that is subject to ownership, prospective ownership, or possessory or

contractual interest of A-II.

- K. "Response Action" shall mean any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.
- L. "Responsible Party" shall mean:
- a. The owner and operator of a vessel or a facility, as these terms are defined in CERCLA;
 - b. Any person who, at the time of disposal of any hazardous substance, owned or operated any facility at which such hazardous substances were disposed of, as these terms are defined in CERCLA;
 - c. Any person who, by contract, settlement, or otherwise, arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by such a party or entity and containing such hazardous substances, as these terms are defined in CERCLA;
 - d. Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person from which there is a release or other discharge, or a threatened release that causes the incurrence of response costs, of a hazardous substance, as such terms are defined in CERCLA; and
 - e. Any person who owns or operates or who owned or operated an above ground or underground storage tank from which petroleum or petroleum products have been released or who owns and operates or who owned or operated a property on which a petroleum release has occurred; however, the exemptions of Section 44-2-80(B) and (C) apply.
- M. "The Site" shall mean all areas where a Pollutant or Contaminant, Petroleum or Petroleum product, or Hazardous Substance has been released, deposited,

stored, disposed of, placed, or otherwise comes to be located; "Site" does not include any consumer product in consumer use or any vessel, as defined in CERCLA Section 101 (28).

- N. "Voluntary Cleanup" shall mean a response action taken under and in compliance with the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002 and Supp. 2007), as amended on June 11, 2008.
- O. "Work Plan" shall mean the plan for additional response actions to be conducted at the Property as described in Paragraph 4 of this Contract.

2. Based on the information known by and/or provided to the Department, the following findings are asserted for purposes of this Contract:

- A. Owners and operators on the Property are as follows:

Charleston County TMS 466-00-00-017

| | |
|---|--------------------|
| Planters Warehouse and Fertilizer Company | Prior to 1906 |
| Planters Fertilizer and Phosphate Company | 1906, 1910 to 1966 |
| Ross Industrial Products | 1966 to 1970 |
| Ross Development Corporation | 1970 to 1975 |
| City Council of Charleston, Commissioners of Public Works of the City of Charleston | 1975 to present |

**Charleston County TMS 466-00-00-046
(eastern portion of property, original TMS 466-00-00-046)**

| | |
|---|--------------------|
| Planters Warehouse and Fertilizer Company | Prior to 1906 |
| Planters Fertilizer and Phosphate Company | 1906, 1910 to 1966 |
| Ross Industrial Products | 1966 to 1970 |
| Ross Development Corporation | 1970 to 1975 |
| City Council of Charleston, Commissioners of Public Works of the City of Charleston | 1975 to 2001 |

City of Charleston

2001 to present

| Charleston County TMS 466-00-00-046 (western portion of TMS 466-00-00-046, formerly TMS 466-00-00-047) | |
|---|------------------------|
| Planters Warehouse and Fertilizer Company | Prior to 1906 |
| Planters Fertilizer and Phosphate Company | 1906, 1910 to 1966 |
| Ross Industrial Products | 6/17/1966 to 6/30/1966 |
| Columbia Nitrogen Corporation | 1966 to 1985 |
| Susan M. Smythe | 2/7/1985 to 2/12/1985 |
| Commissioners of Public Works of the City of Charleston | 1985 to present |

- B. The subject property is located in the coastal plain physiographic province approximately one half mile west of the Ashley River in the Charleston Neck area of Charleston County, South Carolina. For over 100 years, the area surrounding the subject property has been a location for numerous industrial activities including phosphate-based fertilizer manufacturing, wood treatment/preservation, and other industrial uses.
- C. Historical records indicate the subject property was an undeveloped portion of a phosphate fertilizer manufacturing plant that began operation sometime before 1915. Although fertilizer manufacturing activities were conducted west and downgradient of the subject property, materials were transferred to and from the fertilizer plant on railroad lines that run in an east-west direction through the subject property. Records indicate that during the 1940s, the central portion of the property south of the rail line was used for storage of wood products, possibly for the adjoining Koppers wood treatment facility.
- D. From the 1920's until 1977, wood treating operations were conducted at the adjoining Koppers site located south and southwest of the subject property. The historic wood treating operations resulted in significant impacts to soil, groundwater, surface water, and sediment. The Koppers site was proposed for

inclusion on the National Priorities List (NPL) in 1992 and a Record of Decision (ROD) was signed in 1998. Contaminants from the Koppers NPL site have migrated to the subject property via surface water and groundwater flow. A plume of non-aqueous phase liquid (NAPL) has migrated northward from the former Koppers facility to the eastern portion of the subject property. Currently available information indicates that migration of this plume has been stabilized by the ongoing operation of the groundwater remediation system as required by the ROD.

E. In 1975, two City of Charleston governmental entities (City) purchased the eastern portion of the property, consisting of all but a small westernmost portion, which was acquired by the City in 1985. During City ownership, the Property has been used for vehicle maintenance, storage, fire training activities, and drying and storage of street sweepings, as further described below.

F. 1950 Milford Street, eastern 4.14 acres

- a. The City formerly operated six Underground Storage Tanks (USTs) registered with the SCDHEC Underground Storage Tank Program as UST Permit #01581. These USTs included two 4,000-gallon diesel USTs, two 4,000-gallon unleaded gasoline USTs, two 4,000-gallon regular (leaded) gasoline USTs, and three fueling dispensers. These former USTs were abandoned in place with concrete. A UST Closure Assessment conducted in October 1993 identified petroleum hydrocarbons in groundwater and subsequent assessment activities conducted between May 2001 and October 2003 confirmed the vertical and horizontal extent of petroleum contamination. This groundwater petroleum contamination is being addressed by the Koppers groundwater remediation system, as these impacts are located within the Koppers NAPL groundwater plume. Numerous groundwater monitoring wells and NAPL recovery wells are

located on this portion of the subject property.

- b. Building 2 is currently used for storage, but was formerly the City Garage. This building contains a secondary containment structure that formerly housed an above ground storage tank (AST) used for waste oil storage.
- c. Currently, the City maintains one 2,000-gallon diesel fuel AST, two 1,000-gallon gasoline ASTs, and one 500-gallon hydraulic oil AST. These ASTs are located in the vicinity of Building 3, which is also where the six closed USTs are located. Minor and isolated staining of pavement was noted in the area of these tanks in the November 25, 2008 Phase I Assessment Report. Other current activities reported for this portion of the property include truck washing, sign painting, radio repair. No staining or evidence of releases associated with these operations is reported in the Phase I Report.

G. 2150 Milford Street, western portion of property

- a. The Commissioners of Public Works previously used the 2150 Milford Street as a fleet maintenance and storage facility. This facility included a former UST system consisting of one 2,000-gallon diesel UST and two gasoline USTs with capacities of 1500 and 2,000 gallons and registered with the SCDHEC Underground Storage Tank Program as UST Permit #01497. The tanks were abandoned by removal in November 1994 followed by delineation of the groundwater contaminant plume. More recent assessment in 2007 indicates groundwater impacts in the area of the former tanks and at an immediately downgradient monitoring location.
- b. Since 1975, the City has been conducting fire training activities on a portion of the Property. These activities include burning of petroleum based products including fuels, oils, foam, carpeting, and plastics. Stained asphalt and soils are present where the fire training activities occur and at the location of a 500-gallon AST that is reportedly in poor condition and being used for storage of fuel oil for the training exercises.

- c. The City uses the western portion of the Property for dewatering and storage of organic and inorganic debris recovered from city storm drains and “street sweepings”. The water from this material drains from a drying pad into a retention basin. When the basin is full, excess water flows directly into a drainage feature located along Milford Street.
 - H. Ashley II of Charleston plans to redevelop the Property for commercial and mixed-use purposes, including retail, hotel, office and where appropriate, multifamily or single family residential use.
3. A-II is a South Carolina limited liability company with its principal place of business located at 1601 Oceanic Street, Charleston, SC 29405. A-II is a Non-Responsible Party at the Site; it is not a parent, successor, or subsidiary of a Responsible Party at the Site; and it certifies that it and its members are eligible to be a Bona Fide Prospective Purchaser for the Property. A-II and its members have had no previous involvement with the Site, including but not limited to any such activities that may have resulted in any Existing Contamination at the Site.
4. A-II agrees to submit to the Department for review and written approval no later than thirty days after current operations on the Property cease, a Work Plan for the Property that is consistent with the technical intent of the National Contingency Plan. A phased approach toward assessment is acceptable and may be conducted in accordance with Department approved Work Plan(s) before the City of Charleston moves from the Property. The Work Plan(s) shall be implemented upon written approval from the Department. The Work Plan(s) shall include the names, addresses, and telephone numbers of the consulting firm, the analytical laboratory certified by the Department, and A-II's contact person for matters relating to this Contract. A-II will notify the Department in writing of changes in the contractor or

laboratory. The Department will review the Work Plan(s) and will notify A-II in writing of any deficiencies in the Work Plan(s), and A-II shall respond in writing within thirty (30) days to the Department's comments. The Work Plan(s) and all associated reports shall be prepared in accordance with industry standards and endorsed by a Professional Engineer (P.E.) and/or Professional Geologist (P.G.) duly-licensed in South Carolina and shall set forth methods and schedules for accomplishing the following tasks:

- A. A-II shall document and remove all existing potential sources of contamination from the property:
 - a. All drums, tanks, or other containers and items that are identified as potential sources of contamination on the Property at any time prior to or during assessment or development activities, shall be characterized and removed from the Property for proper use or disposal in accordance with applicable regulations.
 - b. Records documenting characterization and disposal of these items shall be provided to the Department within 30 days of removal.
 - c. Should any release of contamination occur or be identified during removal of these items, A-II shall immediately notify the Department and shall assess the impact of the release in accordance with a Department approved plan.
- B. A-II shall assess soil contamination on the property through collection and analysis of a representative number of both unbiased and biased sampling locations. Available soil quality data from past assessment activities may be compiled and used as a baseline for identifying the need for additional sampling locations in some areas.
 - a. Unbiased sample locations should be located on a grid no greater than 200 feet.

- b. Biased sample locations shall be selected to target specific potential contaminant source areas including, but not necessarily limited to:
 - i. The fire training area including the area surrounding the 500-gallon AST used for storage of fuel oil for the training exercises.
 - ii. The area used for dewatering debris collected from storm drains and “street sweepings” including the retention basin and the overflow drainage area.
 - iii. The rail line associated with former phosphate fertilizer manufacturing activities.
 - iv. City of Charleston Garage USTs, 1950 Milford Street, UST Permit # 01581 for any soil contamination that may pose a risk to human health through direct contact.
 - v. Charleston Commissioners of Public Works USTs, 2150 Milford Street, UST Permit #01497 for any soil contamination that may pose a risk to human health through direct contact.
 - vi. Any additional potential source areas that may be identified upon the City's move from the property based on areas of stained soil or pavement, or other indications of a release.
- c. Each soil sample location shall include one surface soil sample (collected from 0-1 foot below ground surface unless another horizon exhibits greater impact based on field screening). The Department considers the soil interval from 0-2 feet to be surface soil. Each soil sample location shall also include one subsurface soil sample (collected from greater than two feet minimum depth). Soil samples shall be analyzed for EPA Target Analyte List and Target Compound List parameters (TAL/TCL).
- d. Soil quality results shall be compared to the residential and industrial exposure screening levels listed on the EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites, and to the Protection of

Groundwater Soil Screening Levels also found on that table. All screening levels used for comparison should be those listed on the above referenced table in effect at the time of assessment.

- C. A-II shall assess groundwater quality on the Property:
- a. Groundwater assessment may utilize existing monitoring wells in acceptable condition with permission from the appropriate party responsible for the monitoring wells. Available groundwater quality data from past assessment activities may be compiled and used as a baseline for identifying the need for additional groundwater sampling locations. Groundwater assessment may also include installation of additional monitoring wells as necessary to augment the existing monitoring well system and allow collection of representative groundwater samples sufficient to characterize releases from potential contaminant source areas. Groundwater assessment shall be conducted to define groundwater flow direction, characterize background groundwater quality, and to characterize releases including, but not necessarily limited to, the following potential contaminant source areas:
 - i. City of Charleston Garage USTs, 1950 Milford Street, UST Permit # 01581.
 - ii. Charleston Commissioners of Public Works USTs, 2150 Milford Street, UST Permit #01497.
 - iii. The fire training area and area surrounding the 500-gallon AST used for storage of fuel oil for fire training exercises.
 - iv. The area used for dewatering debris collected from storm drains and "street sweepings" including the retention basin and the overflow drainage area.
 - v. The rail line associated with former phosphate fertilizer manufacturing activities.

- vi. Any additional potential source areas that may be identified upon the City of Charleston's move from the property based on areas of stained soil or pavement, or other indications of a release.
 - b. Samples from the monitoring wells shall be analyzed for the full suite of parameters on the EPA Target Analyte List and Target Compound List (TAL/TCL). All analytical methods shall use appropriate detection levels to allow comparison to the criteria specified below.
 - c. Groundwater quality results shall be compared to standards set forth in the South Carolina State Primary Drinking Water Regulations, R.61-58 as or if not specified in R.61-58, to the Tap Water value found in the EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites. Screening levels used for comparison should be those listed on the above referenced table in effect at the time of assessment.
- D. In the event that any result exceeds these screening criteria, additional sample locations and procedures to determine the extent of contamination shall be proposed and implemented under an addendum to the Work Plan. The addendum shall be implemented upon written approval from the Department.
- E. A-II shall evaluate and control potential impacts to indoor air:
- a. In the event that the Department determines significant concentrations of volatile organic compounds are encountered in subsurface soil samples or groundwater samples, a representative number of soil gas samples shall be collected from the Property. The Department will use the modified Johnson and Ettinger Model to determine "Significant concentrations" and the model will be constrained towards predicting residential and/or commercial exposures consistent with the building construction likely to be employed on the site.

- b. Soil gas samples shall be analyzed for all site related constituents including volatile organic compounds by appropriate methods capable of detecting soil gas concentrations at screening levels indicative of a 10^{-6} risk for shallow gas samples (using an attenuation factor appropriate for the depth of the samples) as identified in Table 2c of EPA OSWER Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils (Subsurface Vapor Intrusion Guidance), <http://www.epa.gov/correctiveaction/eos/vapor.htm>.
 - c. An addendum to the Work Plan shall be submitted detailing the steps to be taken if the soil gas evaluation indicates contamination underlying the Property may impact indoor air quality.
- F. A-II shall stop continuing releases and address contamination in a manner that is protective of human health and the environment, consistent with the intended future use of the Property:
- a. Based on the results of the assessment activities above, A-II shall take reasonable steps, approved by the Department, to address the presence of contamination:
 - i. In excess of appropriate human-health and ecological risk-based standards via all potential routes of exposure;
 - ii. In excess of appropriate standards for contaminant migration to groundwater; or
 - iii. In the event that presumptive evidence of a Non-Aqueous Phase Liquid (NAPL) is found in the subsurface under the Property. The Department acknowledges that Beazer East, Inc. is responsible for addressing, in accordance with the ROD, the NAPL that has migrated onto the Property from the former Koppers facility except to the extent that the presence of NAPL may affect risk to human-health under A-II's

proposed future use of the property (as addressed in F.a.i. above).

- b. Any action to address contamination and other activities undertaken at the Property shall be consistent with all laws and permitting requirements of the Department, including, but not limited to, stormwater management, waste disposal regulations, and asbestos abatement. A-II shall identify and obtain the applicable permits before initiating any actions.
- G. A-II shall implement groundwater monitoring and/or abandon permanent monitoring wells:
- a. Based on the results of groundwater assessment, implementation of a Department-approved groundwater monitoring program may be required.
 - b. A-II shall ensure that all existing monitoring wells on the Property currently in use by other environmental regulatory programs are preserved. In the event that the monitoring wells cannot be preserved, they must be abandoned in accordance with the South Carolina Well Standards R.61-71. Should any monitoring well that is still in use for another regulatory program be abandoned or destroyed by A-II, A-II shall be responsible for any costs associated with installing replacement monitoring wells.
 - c. If groundwater monitoring is not required and there are no further needs for any of the groundwater monitoring wells, A-II shall abandon the monitoring well(s) in accordance with R.61-71 of the South Carolina Well Standards.
5. A-II shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan that is consistent with Occupational Safety and Health Administration regulations. A-II agrees that the Health and Safety plan is submitted for informational purposes only to the Department and the Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by A-II.

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6. A-II shall inform the Department at least five (5) working days in advance of all field activities pursuant to this Contract and shall allow the Department and its authorized representatives, if so desired, to take duplicates of any samples collected by A-II pursuant to this Contract.
 7. A-II shall preserve all drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site that may provide environmental information, evidence of a Potentially Responsible Party's involvement at the Site, or may lead to the discovery of other areas of contamination at the Site. Prior to destruction of any such items, A-II shall notify the Department of their location and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense.
 8. Within 30 days of the execution date of this Contract and quarterly thereafter, A-II shall submit to the Department's project manager a written progress report that must include the following: (a) brief summary of the City of Charleston's activities and any environmental problems during the last reporting period; (b) update on the City of Charleston's schedule to move to new location; (c) any actions taken under this Contract during the previous reporting period; (d) actions scheduled to be taken in the next reporting period; (e) sampling, test results, and any other data, in summary form, generated during the previous reporting period, whether generated pursuant to this Contract or not; and (f) a description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.
 9. All correspondence which may be required or permitted to be given by either party to the other hereunder shall be in writing and deemed sufficiently given if delivered by

(i) regular U.S. mail, (ii) certified or registered mail, postage prepaid, return receipt requested, (iii) or nationally recognized overnight delivery service company or by hand delivery to the other party at the address shown below or at such place or to such agent as the parties may from time to time designate in writing. All correspondence, four (4) copies of all Work Plans and Reports, and one (1) copy of the Health and Safety Plan should be submitted to:

For the Department:

Angela Gorman

Bureau of Land and Waste Management

2600 Bull Street

Columbia, South Carolina 29201

For A-II:

Michael Costa

Ashley II of Charleston, LLC

c/o Magnolia Development

1601 Oceanic Street

Charleston, SC 29405

10. The Department and A-II recognize that public participation is an important component of the Voluntary Cleanup Contract. Specific functions of the Department and A-II are as follows:

a. The Department will seek public comment in accordance with S.C. Code Ann. § 44-56-750 (2002 and Supp. 2007), as amended on June 11, 2008, and as outlined below:

i. Upon signature of this Contract by A-II, the Department will provide notice for public participation by placing announcements describing the proposed Contract in newspaper(s) of general circulation within the

affected community. A thirty-day period following the publication date of the announcement(s) will be provided for public comment and will precede the Department's scheduled date for execution of the Contract.

- ii. The Department may publicize the proposed Contract by any other means including, but not limited to, electronic mail, news releases, community flyers, and door-to-door canvassing. Such actions may be done solely at the Department's discretion.
 - iii. A public informational meeting will be held if requested by twelve residents of South Carolina or an organization representing twelve or more residents of South Carolina. At the Department's discretion, public informational meetings may be held in the nearby communities for any other reason prior to the Department executing the contract. A public meeting may be requested at any time during the thirty-day comment period. In the event that a public meeting is deemed necessary, the Department will provide approximately two weeks advance notice of the meeting to the public and will extend the public comment period at least through the end of the day following the public meeting. The Department will not execute the contract during any public comment period. In addition, the Department may, at its discretion, conduct public meetings to inform the community about the site at any time after the contract is executed until the certificate of completion is issued.
- b. A-II agrees to enhance the public knowledge of the site response activities by:
- i. Erecting a sign(s) at each entrance onto the Property from any public road, thoroughfare, navigable waterway, or other location routinely accessible by the public. The sign(s) shall be erected not later than one day after publication of any public announcement about the site placed by the Department in any newspaper of general circulation in the community.

- ii. The sign will state "Voluntary Cleanup Project by Ashley II of Charleston, LLC under Voluntary Cleanup Contract 08-5794-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the NRP contract and contact information, including telephone number and address, for a representative of A-II. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432". All required lettering on the sign must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the site without intruding onto the Property.
- iii. Within 10 days after erecting the sign, A-II shall furnish to the Department photographs of the sign along with a site location drawing showing the sign location(s). Photograph(s) of the sign(s) shall be taken from no closer than the edge of the publicly-accessible road, waterway, etc. and should include an appropriately sized scale reference so that Department may determine the size of the sign and effectiveness of the lettering. A-II agrees to revise the sign if the Department determines the sign is not legible.
- iv. A-II must maintain the sign(s) in legible conditions and visible locations throughout the duration of the contract period until a certificate of completion is issued on the site.
- v. In the event that any sign must be removed to accommodate building or grading activities, A-II shall replace the sign within two days. If the sign cannot be restored to the original location, A-II may relocate it to another location meeting the conditions specified above.
- c. All costs incurred by the Department for public participation (e.g., public notice(s), building and equipment rental(s) for public meetings, etc.) will be paid by A-II.

11. The terms and conditions of this Contract apply to and shall inure to the benefit of the Department and A-II Beneficiaries.
12. The Department shall be notified in writing upon transfer of ownership of the Property, but this provision shall not apply to transfer of each conveyance to an owner of a residential dwelling unit on the Property.
13. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation other than A-II Beneficiaries.
14. Nothing in this Contract is intended to limit the right of the Department to undertake future response actions at the Site or to seek to compel parties other than A-II Beneficiaries to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.
15. The Department, its authorized officers, employees, representatives, and all other persons performing response actions will not be denied access to the Property during normal business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). A-II and subsequent owners of the Property shall ensure that a copy of this Contract is provided to any lessee successor or other transferee of the Property.

16. As provided for by S.C. Code Ann. § 44-56-200 (2002) and S.C. Code Ann. § 44-56-750 (D) (2002), A-II shall, on a quarterly basis, reimburse the Department for oversight costs of activities required under this Contract. Oversight costs include but are not limited to the direct and indirect costs of negotiating the terms of this Contract, reviewing Work Plans and reports, supervising corresponding work, and public participation. Payments will be due within thirty (30) days of receipt of the Department's invoice. Invoices shall be submitted to:

Michael Costa
Ashley II of Charleston, LLC
c/o Magnolia Development
1601 Oceanic Street
Charleston, SC 29405

17. A-II Beneficiaries are entitled to protection from contribution claims as provided by CERCLA § 113(f)(2), 42 U.S.C. §§ 9613(f)(2); S.C. Code Ann. § 44-56-200 (2002) and S.C. Code Ann. § 44-56-750 (2002 and Supp. 2007), as amended on June 11, 2008. A thirty (30) day comment period for contribution protection commences upon notice of this Contract to Responsible Parties at the Site as identified by the Department through a reasonable search effort.
18. A-II Beneficiaries are entitled to protection from third-party claims for equitable relief or damages relating to "Existing Contamination" at the Site, as provided by S.C. Code Ann. § 44-56-750 (2002 and Supp. 2007), as amended on June 11, 2008. This limitation on liability does not apply to any contamination, releases, and consequences caused by A-II Beneficiaries. Should contamination not previously identified as "Existing Contamination", or at levels not previously identified, be discovered at the Site, or upon unforeseen releases or consequences, the burden is on A-II Beneficiaries to demonstrate to the Department's satisfaction that the

contamination, release, and/or other consequences were not caused by A-II Beneficiaries. Furthermore, this limitation of liability is effective on the date this contract is executed by the Department, but will be automatically withdrawn if this contract is lawfully terminated by either party.

19. If, after the actions required under this Contract are completed, contamination in excess of residential standards (as defined by the EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites, dated July 7, 2008) remain at the Property, A-II or subsequent owners working under this Contract shall enter into and record a restrictive covenant. The executed restrictive covenant shall be incorporated into this contract as an Appendix and shall be subject to the following provisions:
 - A. Upon the Department's approval of the items outlined therein, the restrictive covenant shall be signed by the Department and an authorized representative of A-II or subsequent owners working under this Contract and witnessed, signed, and sealed by a notary public. The fully executed restrictive covenant shall be filed with the Register of Mesne Conveyance or Deeds in Charleston County by A-II or subsequent owner executing the instrument, and a copy of the restrictive covenant shall be provided to the Department showing that the document has been filed and showing the book and page number where it has been recorded by the county.
 - B. With the approval of the Department, the restrictive covenant may be modified in the future if additional remedial activities are carried out that meet appropriate clean up standards at that time or circumstances change such that the restrictive covenant would no longer be applicable.
 - C. The Department may require A-II or subsequent owners to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occur.

- D. A-II or subsequent owners may commission a survey to delineate a new legal parcel that is subject to the restrictive covenant.
 - E. The restrictive covenant shall be recorded on the master deed of any planned residential community and shall be noted or referenced thereafter on each individual deed of property subdivided from the Property and subject to the restrictive covenant. The restrictive covenant shall reserve a right of entry and inspection for A-II that may be transferred to another single individual or entity for purposes of coordinated compliance monitoring. A-II or subsequent owners shall ensure that protective measures established by the restrictive covenants remain intact and functional on any subdivided property.
 - F. A-II or the single individual or entity responsible for coordinated compliance monitoring shall file an annual report with the Department by May 31st of each year detailing the current land uses and compliance with the restrictive covenants for as long as the restrictive covenant remains in effect on the affected property. The report may be submitted in a manner prescribed by the Department
 - G. A-II or subsequent owners working under this Contract shall create a procedure to provide a single point of contact, e.g. property owners association, responsible for documenting current land use and compliance with the restrictive covenants regardless of the Property's ownership status. The procedure shall be reviewed and approved by the Department before it is implemented.
20. Two (2) years after the execution date of this Contract, A-II or subsequent owner of the Property shall provide the Department with the following information concerning the new operation at the Property: the number of jobs created; the amount of increase to the tax base; the amount of soil removed or remediated, if necessary; cost of all environmental work; and any other information that demonstrates that the

activities performed pursuant to this Contract have been beneficial to the State, the community, and the Department.

21. Upon successful completion of the terms of this Contract as referenced in Paragraphs 4, 5 and 19 above, A-II shall submit to the Department a written notice of completion. As part of this notice, A-II shall report the costs of all environmental work and the total amount invested in the site for property acquisition and capital improvements. Once the Department determines satisfactory completion of the Contract terms, the Department, as provided by CERCLA § 113(f)(2), 42 U.S.C. §§ 9613(f)(2); S.C. Code Ann. § 44-56-200 (2002) and S.C. Code Ann. § 44-56-750 (2002 and Supp. 2007) as amended on June 11, 2008, will give A-II a Certificate of Completion that provides a covenant not to sue A-II Beneficiaries, for Existing Contamination. Should contamination not previously identified as "Existing Contamination", or at levels not previously identified, be discovered at the Site, or upon unforeseen releases or consequences, the burden is on A-II Beneficiaries to demonstrate to the Department's satisfaction that the contamination, release, and/or other consequences were not caused by A-II Beneficiaries. In consideration of the protections from the Department, A-II Beneficiaries agree not to assert any claims or causes of action against the Department arising out of activities undertaken at the Site or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site, except for those claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions.
22. A-II specifically denies any responsibility for response costs or damages resulting from Existing Contamination and does not, by signing this Contract, waive any rights that it may have to assert any claims in law or equity against any other person, company, or entity with respect to the Site. However, A-II Beneficiaries are responsible and liable for any and all contamination, releases, and consequences

they cause or contribute to the Site. Should environmental contamination not previously identified as "Existing Contamination", or at levels not previously identified, be discovered at the Site, or upon unforeseen releases or consequences, the burden is on A-II Beneficiaries to demonstrate to the Department's satisfaction that the contamination, release, and/or other consequences were not caused by A-II.

23. A-II or subsequent owners of the Property and the Department each reserve the right to unilaterally terminate this Contract. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Contract to the other party. Should A-II or subsequent owners of the Property elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that any environmental or physical hazard created by A-II shall be stabilized and/or mitigated such that the Property does not pose a hazard to human health or the environment that did not exist prior to any initial response action addressing contamination identified in this Contract. Termination of this Contract by A-II, Owner or the Department does not end the obligations of A-II or Owner to pay oversight costs already incurred by the Department and payment for such costs shall become immediately due.
24. The Department may terminate this Contract only for cause, which may include but is not limited to the following: Events or circumstances at the Property that are inconsistent with the terms and conditions of this Contract;
 - A. Events or circumstances at the Property that are inconsistent with the terms and conditions of this Contract;
 - B. Failure to complete the terms of this Contract or the Work Plan;
 - C. Failure to submit timely payment for oversight costs as defined in Paragraph 16 above;

- D. Additional contamination or releases or consequences caused by A-II Beneficiaries;
 - E. Providing the Department with false or incomplete information or knowing failure to disclose material information;
 - F. Change in A-II Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract.
 - G. Failure by A-II Beneficiaries to obtain the applicable permits from the Department for any response actions or other activities undertaken at the Property.
25. Upon termination of the Contract, the covenant not to sue, contribution protection, and liability protection will be null and void. However, if any A-II Beneficiary provides false or incomplete information or if its business activities change such that they are inconsistent with the terms and conditions of this Contract, then the covenant not to sue, contribution protection, and liability protection shall become null and void only as to the A-II Beneficiaries involved in the action giving rise to the termination without affecting the protections provided by this Contract to the previous Non-Responsible Parties and other A-II Beneficiaries.
26. The signatories below hereby represent that they are authorized to and do enter into this contract on behalf of their respective parties.

THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL

BY: _____
Daphne G. Neel, Chief
Bureau of Land and Waste Management

DATE: _____

Approved by Office of General Counsel

DATE: _____

Ashley II of Charleston, LLC

BY: _____

DATE: _____

Robert L. Clement III
Printed Name and Title

APPENDIX A

PARCEL 1 (TMS #466-00-00-046)

ALL that piece, parcel or tract of land, together with the buildings and improvements thereon, if any, situate, lying and being in the City and County of Charleston, South Carolina and being shown and designated as a 12.23 acre, more or less, parcel on plat by William C. Boineau, Jr., dated August 10, 1998, revised November 2, 2000 entitled in part **"PLAT SHOWING 12.23 ACRES OWNED BY THE COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF CHARLESTON ABOUT TO BE CONVEYED TO THE CITY OF CHARLESTON T.M.S. 466-00-00-46&47 IN THE CITY OF CHARLESTON CHARLESTON COUNTY, SOUTH CAROLINA"** and recorded November 17, 2000 at Plat Book EE, Page 452, RMC Office for Charleston County, South Carolina, and having such size, shape, buttings, boundings, dimensions and location as will appear by reference to said plat which is incorporated herein by reference be all the said dimensions and measurements a little more or less, and being currently known in the tax map numbering system of Charleston County, South Carolina as TMS #466-00-00-046.

PARCEL 2 (TMS #466-00-00-017)

ALL those pieces, parcels or tracts of land, together with the buildings and improvements thereon, if any, situate lying and being in the City and County of Charleston, South Carolina and being shown and designated as "TMS #466-00-00-017 Parcel 2 City Counsel of Charleston, etal 3.44 ac. 150020.89 sq. ft." and as "TMS #466-00-00-017 City Counsel of Charleston, etal 2166 Milford Street 0.688 ac. 29797.84 sq. ft." on a plat by Davis & Floyd, Inc. entitled in part "Boundary survey of existing parcels showing TMS #466-00-00-017 property of City Counsel of Charleston, etal about to be acquired by Ashley II of Charleston, LLC located City of Charleston, Charleston County, South Carolina" dated March 31, 2008 with plat drawing date of June 24, 2008 and signed by Kevin Thewes, SCRLS and recorded at Plat Book EL, Page 614, RMC Office for Charleston County, South Carolina and having such size, shape, abutting, boundings, dimensions and locations as will appear by reference to said plat which is incorporated herein by reference, be all the said dimensions and measurements a little more or less.

For reference see TMS #466-00-00-046 and TMS #466-00-00-017 Charleston County, South Carolina.

APPENDIX B

Ashley II of Charleston, LLC
1601 Oceanic Street
Charleston, SC 29405
Telephone: (843) 577-0570

March 18, 2008

Via Federal Express and Via Facsimile (803-896-4001)

Ms. Gail Rawls Jeter
South Carolina Department of Health and Environmental Control
Bureau of Land and Waste Management
Division of Site Assessment and Remediation
2600 Bull Street
Columbia, SC 29201

Re: Information and Certification
City of Charleston Public Works
Milford Street
City of Charleston, County of Charleston, South Carolina
Non-Responsible Party Voluntary Cleanup Contract

Dear Ms. Jeter:

Please accept this letter as an Information and Certification pursuant to S.C. Code Ann. § 44-56-750 on behalf of Ashley II of Charleston, LLC or an affiliated entity formed by or related to Ashley II of Charleston, LLC ("Ashley II") regarding the property referenced above ("Site") for a proposed Non-Responsible Party Voluntary Cleanup Contract ("NRP VCC").

1. Ashley II intends to purchase the Site and redevelop it for commercial and mixed-use purposes, including retail, hotel, office, and where appropriate, multifamily or single family residential. The Site is approximately 16.37 acres, located in the City of Charleston, and identified by Charleston County TMS Nos. 466-00-00-17 and 466-00-00-046. The proposed purchase and response action will benefit the State, community and the Department in numerous ways. The purchase and response action will substantially reduce the risk posed by the Site by seeking to identify and characterize any issues of environmental concern. The purchase and response action should create new jobs in Charleston County.
2. Ashley II is not a responsible party as defined under CERCLA § 107(a) and S.C. Code Ann. § 44-56-720(8) at the Site, nor is it a parent, successor or subsidiary of a responsible party at the Site. Ashley II is not aware as to whether there is a viable responsible party who can perform any necessary response actions at the Site. Further identification of prior owners and operators will be provided upon request.

Ashley II of Charleston, LLC

Letter to Ms. Gail Rawls Jeter

South Carolina Department of Health and Environmental Control

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3. Continued or new uses at the Site will not, with the exercise of due care, aggravate or contribute to any existing contamination, if any exists, nor interfere with any future response action, nor will it pose health risks to either the community or those persons likely to be present at or near the Site.
4. Ashley II is financially viable and able to meet the obligations of an NRP VCC. Upon request, Ashley II will provide the Department with a letter from its financial institution stating that Ashley II is financially able to pay for its obligations under the NRP VCC.
5. Ashley II plans to redevelop the Site for commercial and mixed-use purposes, that may include retail, hotel, office, and where appropriate, multifamily or single family residential.
6. Ashley II proposes to provide the Department with a Phase I Environmental Site Assessment and to conduct other appropriate environmental investigation, consistent with the Phase I, after consultation and discussion with the Department.
7. The property is identified on Charleston County Tax Maps as TMS Nos. 466-00-00-017 and 466-00-00-046. A copy of the Charleston County tax map showing the Site is attached as Exhibit A. (Exhibit A shows Parcels 466-00-00-046 and -047, which were subsequently combined into one parcel and assigned TMS No. 466-00-00-046).
8. The contact person for the undersigned for the matters relating to this Site is: Mr. Michael Costa, Magnolia Development LLC, 1601 Oceanic Street, Charleston, SC 29405; 843-577-0570.

Please contact me if you need any additional information. We look forward to working with the Department on this project.

Sincerely yours,



Craig A. Briner
Authorized Member

Enclosure: Exhibit A (Tax Map)

cc: Michael Costa, Magnolia Development, LLC
Scott Freeman, Ashley II of Charleston, LLC

Exhibit A

